



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 6612-97
12 April 1999

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 25 March 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board noted that in order for you to establish your entitlement to disability retirement effective from 14 September 1989, when you were released from active duty, you must demonstrate that you were unfit for duty at that time. It found that although the meningioma may have been present in 1989, the mere presence of a benign brain tumor does not necessarily render a service member unfit for duty. The Board did not accept your contention to the effect that you would have been retired by reason of physical disability had the tumor been detected in 1989, because there is no indication in the available records that the tumor produced significant symptoms at that time. In fact, it does not appear that there was any basis for even questioning your fitness for duty prior to 7 April 1992, when your first seizure occurred. The Board was not persuaded that your seizure condition met the criteria for a rating in excess of 10% when your case was finalized in 1996, or that any of your other physical conditions rendered you unfit for duty and should have been rated. It concluded that your receipt of multiple disability ratings from the Department of Veterans Affairs (VA) for your other physical conditions is not probative of the existence of error or injustice in your naval record, because the VA assigns ratings without regard to the issue of

fitness for military duty.

In view of the foregoing, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director